

APR 25 1995

95 066485

COVENANT OF DEED RESTRICTION

Recording Requested By:

City of Richmond

When Recorded, Mail To:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E., Chief
Site Mitigation Branch

RECORDED AT REQUEST OF

City of Richmond

APR 25 1995

AT 3:00 CLOK P M.
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE \$

COVENANT
TO RESTRICT USE OF PROPERTY

The "American Standard Property (1BN-112)" Site
Richmond Parkway
Richmond, California

This Covenant and Agreement ("Covenant") is made on
the 24 day of April, 1995 by City of Richmond
("Covenantor"), which is the owner of record of certain
property situated in Richmond, County of Contra Costa,
State of California, described in Exhibit "A" attached
hereto and incorporated herein by this reference (the
"Property"), and by the Department of Toxic Substances
Control (the "Department"). Covenantor and the Department
desire and intend that in order to protect the present and
future public health and safety, the Property shall be used
in such a manner as to avoid potential harm to persons or
property which may result from hazardous substances which
have been deposited on the Property

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ARTICLE I

STATEMENT OF FACTS

1.01 Description of contamination. The property is approximately 3.7 acres and is located on Essex Avenue (near Castro and Hensley Streets) in the City of Richmond. The property was used for the manufacture of porcelain enamel coated cast-iron bathroom fixtures. Fill and waste material deposited from on-site activities appear to be the source of soil contamination. Contaminants detected in the soil are heavy metals including arsenic, lead, and zinc. The property is currently part of the Richmond Parkway Bypass and is covered with soil and asphalt roadway (hereinafter referred to as "Cap") to contain the contaminants and prevent the contaminants from migrating. Soil remediation at the property was implemented during the construction of the Richmond Parkway.

1.02 Health Effects. The potential routes of exposure to these contaminants are through dermal contact, ingestion and inhalation of dusts and particulates from on-site soil. The Cap eliminated generation of dusts and particulates from on-site contaminated soil. The Cap would also prevent surface water from infiltrating into soils containing the contaminants. However, should the potential routes of exposure to these contaminants not be minimized or eliminated, the potential human health effects resulting from exposure to these contaminants are as follows:

1 a. Arsenic. Arsenic compounds have been shown to
2 produce acute and chronic toxic effects which include
3 systemic irreversible damage. The trivalent compounds
4 are the most toxic and tend to accumulate in the body.
5 Chronic animal studies have shown body weight changes,
6 decreased blood hemoglobin, hepatic damage, and kidney
7 damage. Arsenic has been shown to be mutagenic in
8 several test systems and to induce chromosomal
9 aberrations both in vivo. Carcinogenicity studies
10 with laboratory animals have reported conflicting
11 results. Several studies have reported an increased
12 incidence of bronchiogenic carcinomas in rats exposed
13 to an arsenic-containing pesticide through
14 intratracheal exposure. In humans, tumors of the
15 skin, lungs, genital organs, and visual organs have
16 been associated with arsenic exposure. Arsenic has
17 been classified by U. S. EPA as a human carcinogen.

18 b. Lead. Acute exposure to lead may produce
19 fatigue, headache, aching muscles and bone,
20 gastrointestinal disturbances, sleep disturbance,
21 abdominal pain and decreased appetite. Chronic
22 exposure can lead to irreversible vascular sclerosis,
23 irreversible brain damage, tubular cell atrophy,
24 interstitial fibrosis, and glomerular sclerosis (Sax
25 1989).

26 c. Zinc. Zinc is an irritant, causing throat
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1 dryness, coughing, fatigue, aches, chills, fever,
2 nausea, and vomiting (Sax 1989).

3 1.03 Surrounding Land Use. The Property is located
4 in the City of Richmond on Essex Avenue (near Castro and
5 Hensley Streets), and is being used as a roadway. Land
6 uses surrounding the Property are light industrial and
7 residential. The area within a one-mile radius of the
8 Property is primarily industrial use. The nearest home
9 downwind from the Property is approximately 0.25 mile away.
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11 ARTICLE II

12 GENERAL PROVISIONS

13 2.01 Provisions to Run with the Land. This Covenant sets
14 forth ~~promissive~~ provisions, covenants, restrictions, and
15 conditions (collectively referred to as "Restrictions"),
16 upon and subject to which the Property and every portion
17 thereof shall be improved, held, used, occupied, leased,
18 sold, hypothecated, encumbered, and/or conveyed. Each and
19 all of the Restrictions shall run with the land, and pass
20 with each and every portion of the Property, and shall
21 apply to, inure to the benefit of, and bind the respective
22 successors in interest of Covenantor. Each and all of the
23 Restrictions are imposed upon the entire Property unless
24 expressly stated as applicable to a specific portion of the
25 Property. Each and all of the Restrictions are imposed
26 pursuant to Health and Safety Code Sections 25355.5 and run
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1 with the land pursuant to Health and Safety Code Sections
2 25355.5. Each and all of the Restrictions are for the
3 benefit of and enforceable by the Department.

4 2.02 Concurrence of Owners Presumed. All purchasers,
5 lessees, or possessors of any portion of the Property shall
6 be deemed by their purchase, leasing, or possession of such
7 Property, to be in accord with the foregoing and to agree
8 for and among themselves, their heirs, successors,
9 assignees, agents, employees, and lessees of such owners,
10 heirs, successors, and assignees, that the Restrictions as
11 herein established must be adhered to for the benefit of
12 future Owners and Occupants and that their interest in the
13 Property shall be subject to the Restrictions contained
14 herein.

15 2.03 Incorporation into Deeds and Leases. Covenantor
16 desires and covenants that the Restrictions set out herein
17 shall be incorporated by reference in each and all future
18 deeds and leases of any portion of the Property.
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20 ARTICLE III

21 DEFINITIONS

22 3.01 Department. "Department" shall mean the
23 California Department of Toxic Substances Control and
24 shall include its successor agencies, if any.

25 3.02 Improvements. "Improvements" shall mean all
26 buildings, roads, driveways, regrading, and paved parking
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1 areas, constructed or placed upon any portion of the
2 Property.

3 3.03 Occupant(s). "Occupant(s)" shall mean those
4 persons entitled by ownership, leasehold, or other legal
5 relationship to the exclusive right to occupy any portion
6 of the Property.

7 3.04 Owner(s). "Owner(s)" shall mean the
8 Covenantor or its successors in interest, including heirs
9 and assigns, who hold title to all or any portion of the
10 Property.

11
12 ARTICLE IV

13 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

14 4.01 ~~Restrictions on Development and Use~~ Covenantor
15 promises to restrict the use of the Property as described
16 in said Exhibit A as follows:

- 17 a. Property shall be restricted for use as a
18 roadway (i.e. Expressway, Street or Freeway).
19 No other use of the Property shall be allowed
20 without the prior approval of the Department.
21 b. No drilling for drinking water, oil, or gas
22 shall be permitted on the Property.
23 c. No raising of food (cattle, food crops, cotton)
24 shall be permitted on the Property.
25 d. No activities which will disturb the soil (e.g.,
26 excavation, grading, removal, trenching,
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1 filling, earth movement, or mining) shall be
2 permitted on the Property without a Soil
3 Management Plan and a Health and Safety Plan
4 submitted to the Department for review and
5 approval.

6 e. The Property shall be posted with a bilingual
7 sign in English and Spanish stating that no
8 grading, excavation or construction activities
9 can occur on the Property without a written
10 permission of the Department.

11 f. Any contaminated soils brought to the surface by
12 grading, excavation, trenching or backfilling
13 shall be managed in accordance with all
14 applicable provisions of state and federal law.

15 g. The Property shall be used in such a way as to
16 preserve the integrity of the cap and monitoring
17 wells and any other hazardous waste containment.

18 h. The Owner(s)/Occupant(s) shall not conduct any
19 activities which would cause a potential threat
20 to public health and safety.

21 i. The Owner(s)/Occupant(s) shall maintain all
22 caps, fences, gates and warning signs, as
23 specified in the Engineering Evaluation/Cost
24 Analysis and Operation and Maintenance Plan for
25 the Site.

26 j. Any proposed alteration of the Cap shall require
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95 066485

1 written approval of the Department.

2 k. The Owner(s) shall monitor the Cap for any
3 deterioration of the cap.

4
5 1. The Owner(s) shall notify the Department of each
6 of the following: 1) The type, cause, location
7 and date of any disturbance to the cap which
8 could affect the ability of the cap to contain
9 subsurface hazardous substances on the Property
10 and 2) The type and date of repair of such
11 disturbance. Notification to the Department
12 shall be made by registered mail within ten (10)
13 working days of both the discovery of cap
14 disturbance and the completion of repairs.

15 m. The Owner(s) shall monitor the groundwater to
16 determine the effectiveness of the remedy. If
17 monitoring detects contamination at levels of
18 concern, the Owner shall develop and submit a
19 plan of correction for Department approval.

20 n. The Owner(s) grants the Department an easement
21 to the Property for inspection, surveillance,
22 monitoring, maintenance, and other activities
23 consistent with the purposes of this covenant as
24 deemed necessary by the Department in order to
25 protect the public health and safety.

26 o. Prior to sale, lease, or rental, the Owner(s)
27 shall give written notice to purchasers,

1 lessees, and tenants stating that there is
2 residual contamination as specified in Health &
3 Safety Code Section 25359.7.

4 4.02 Conveyance of Property. The Owner(s) shall
5 provide a thirty (30) days advance notice to the Department
6 of any sale, lease or other conveyance of the Property or
7 an interest in the Property to a third person. The
8 Department shall not, by reason of the Covenant, have
9 authority to approve, disapprove, or otherwise affect any
10 sale, lease, or other conveyance of the Property except as
11 otherwise provided by law, by administrative order, or by
12 reason of this Covenant.

13 4.03 Enforcement. Failure of the Owner(s) to comply
14 with any of the requirements, as set forth in Section 4.01,
15 may be grounds for the Department, by reason of the
16 Covenant, to require that the Owner(s) modify or remove any
17 improvements constructed in violation of Section 4.01.
18 Violation of the Covenant may be grounds for the Department
19 to file civil and criminal actions against the Owner(s) as
20 provided by law.

21 4.04 Notice in Agreements. All Owners and Occupants
22 shall execute a written instrument which shall accompany
23 all purchase, lease, sublease, or rental agreements
24 relating to the Property. The instrument shall contain the
25 following statement:
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1 "The land described herein contains hazardous
2 substances. Such condition renders the land and the
3 owner, lessee, or other possessor of the land subject
4 to requirements, restrictions, provisions, and
5 liabilities contained in Chapter 6.5 and Chapter 6.8
6 of Division 20 of the Health and Safety Code as made
7 applicable to this Property by a specific Covenant of
8 Deed Restriction, a copy of which is attached hereto
9 and incorporated herein by reference. This statement
10 is not a declaration that a hazard exists."
11

12 ARTICLE V

13 VARIANCE AND TERMINATION

14 5.01 Variance. Any Owner(s) or, with the Owner(s)'
15 written consent, any Occupant of the Property or any
16 portion thereof may apply to the Department for a written
17 variance from the provisions of this Covenant. Such
18 application shall be made in accordance with Section 25233,
19 Health & Safety Code.

20 5.02 Termination. Any Owner(s) or, with the Owner's
21 (s') written consent, any Occupant of the Property or a
22 portion thereof may apply to the Department for a
23 termination of the Restrictions as they apply to all or any
24 portion of the Property. Such application shall be made in
25 accordance with Section 25234, Health & Safety Code.

26 5.03 Term. Unless modified or terminated in
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1 accordance with Sections 5.01 or 5.02 above, by law or
2 otherwise, this Covenant shall continue in effect in
3 perpetuity.
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5 ARTICLE VI

6 MISCELLANEOUS

7
8 6.01 No Dedication Intended. Nothing set forth
9 herein shall be construed to be a gift or dedication, or
10 offer of a gift or dedication, of the Property or any
11 portion thereof to the general public or for any purposes
12 whatsoever.

13 6.02 Notices. Whenever any person gives or serves
14 any notice, demand, or other communication with respect to
15 this Covenant, each such notice, demand, or other
16 communication shall be in writing and shall be deemed
17 effective 1) when delivered, if personally delivered to the
18 person being served or to an officer of a corporate party
19 being served or official of a government agency being
20 served, or 2) three (3) business days after deposit in the
21 mail if mailed by United States mail, postage paid
22 certified, return receipt requested:

23 To: "Covenantor"

24 City of Richmond
25 Department of Public Works
26 2600 Parrett Avenue
27 P.O. Box 4046
Richmond, California 94804

1 Copy to:

2 Department of Toxic Substances Control
3 Region 2
4 700 Heinz Avenue, Suite 200
5 Berkeley, CA 94710
6 Attention: Barbara J. Cook, P.E., Chief
7 Site Mitigation Branch

8 6.03 Partial Invalidity. If any portion of the
9 Restrictions or terms set forth herein is determined to be
10 invalid for any reason, the remaining portion shall remain
11 in full force and effect as if such portion had not been
12 included herein.

13 6.04 Article Headings. Headings at the beginning of
14 each numbered article of this Covenant are solely for the
15 convenience of the parties and are not a part of the
16 Covenant.

17 6.05 Recordation. This instrument shall be executed
18 by the Covenantor and by the Site Mitigation Branch Chief,
19 California Department of Toxic Substances Control. This
20 instrument shall be recorded by the Covenantor in the
21 County of Contra Costa within ten (10) days of the date of
22 execution.
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2 IN WITNESS WHEREOF, the parties execute this Covenant as of
3 the date set forth above.
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5 COVENANTOR: CITY OF RICHMOND

6 By: *Floyd T. Johnson*

7 Title: Floyd T. Johnson
8 City Manager

9 Date: April 24, 1995

10
11 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

12 By: *Barbara J. Cook*

13
14 Barbara J. Cook, Chief

15 Site Mitigation Branch, Region 2

16 Date: April 24, 1995

95 066485

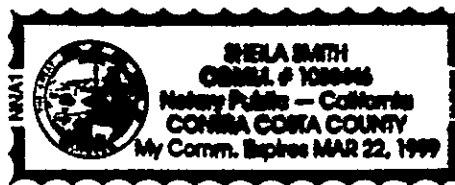
95 066485

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF Contra Costa)
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6 On April 24, 1995 before me, a Notary Public
7 in and for State of California, personally appeared
8 Barbara J. Cook, personally known to me or proved to
9 me on the basis of satisfactory evidence to be the person
10 whose name is subscribed to the within instrument and
11 acknowledged to me that he/she executed the same in his/her
12 authorized capacity, and that by his/her signature on the
13 instrument the person, or the entity upon behalf of which
14 the person acted, executed the instrument.

15 WITNESS my hand and official seal.
16

17 Sheila Smith
18 Notary's Signature

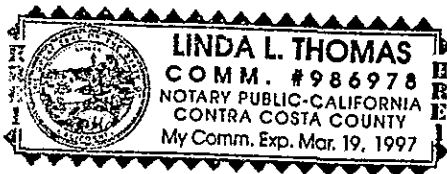



95 066485

STATE OF CALIFORNIA)
) ss
COUNTY OF CONTRA COSTA)

On April 24, 1995, before me, LINDA L. THOMAS, a Notary Public in and for the State, personally appeared FLOYD T. JOHNSON, proved on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that his signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.




LINDA L. THOMAS
Notary Public *

[Attached to Covenant to Restrict Use of Property dated April 24, 1995, between City of Richmond and California Department of Toxic Substances Control, and signed as City Manager of the City of Richmond (re American Standard Property)]

95 066485

EXHIBIT A
Legal Descriptions

R/W-02-3
E.A.

Sta. "A" 92
Factory Street
-CC- -
No. 1BN-112-1
1BN-112-2
1BN-112-3
1BN-112-4

City of Richmond
(County of) Contra Costa

Real property situated in the City of Richmond, County of Contra Costa, State of California, described as follows:

PARCEL 1

A portion of that certain parcel of land described as Parcel One in the deed to American Radiator and Standard Sanitary Corporation, a corporation, recorded July 29, 1959, in Liber 3421 at Page 339, Contra Costa County Records and also a portion of that certain parcel of land described as Parcel Two in the corporation grant deed to American Standard Properties, a limited partnership, recorded November 18, 1981, in Book 10578 at Page 162, Recorder's Series Number 81-149852, Contra Costa County Records, said Parcel One and said Parcel Two also being a portion of Parcel A, as designated on that certain Record of Survey, filed December 11, 1974, in Book 58 of L.S.M. at Page 7, Contra Costa County Records, more particularly described as follows:

BEGINNING at the intersection of the southerly line of said Parcel Two (10578 OR 162) with the westerly right of way line of Factory Street (60 feet wide), said southerly line being designated as "N 89°20'38" W 281.80'" on the aforementioned Record of Survey (58 L.S.M. 7), said southerly line also being the center line of Northwest Avenue vacated by Resolution Number 681, recorded November 5, 1964, in Book 4737 at Page 643, Contra Costa County Records; thence along said southerly line, North 89°20'43" West, 1.12 feet; thence leaving said southerly line, northerly, northwesterly, and westerly along the arc of a 43.00 foot radius, nontangent curve to the left, the center of which curve bears North 89°50'22" West, through a central angle of 126°59'01", an arc distance of 95.30 feet to a point of reverse curvature; thence westerly, northerly, and northeasterly along the arc of a 57.00 foot radius, tangent curve to the right, through a central angle of 193°26'47", an arc distance of 192.45 feet to a point hereinafter referred to as Point "A"; thence North 57°48'16" West, 91.27 feet; thence North 52°03'17" West, 357.09 feet; thence northwesterly along the arc of a 6135.00 foot radius, nontangent curve to the right, the center of which curve bears North 43°07'19" East, through a central angle of 1°32'26", an arc distance of 164.96 feet to a point on the northwesterly line of the aforementioned Parcel One (3421 OR 339), said point being hereinafter referred to as Point "B"; thence along said northwesterly line, northeasterly along the arc of a 1422.38 foot radius, nontangent curve to the right, the center of which curve bears South 44°24'01" East, through a central angle of 11°02'49" an arc distance of 274.24 feet; thence leaving said westerly line, southeasterly along the arc of a 5863.00 foot radius, nontangent curve to the left, the center of which curve bears North 44°21'41" East, through a central angle of 0°45'43", an arc distance of 77.97 feet; thence along a nontangent line, South 44°21'37" East, 393.37 feet; thence South 42°42'36" East, 176.60 feet to a point hereinafter referred to as Point "C"; thence northeasterly along the arc of a 57.00 foot radius, nontangent curve to the right, the center of which curve

R/W-02-3
E.A.

Sta. "A" 92
Factory Street
-CC- -
No. 1BN-112-1
1BN-112-2
1BN-112-3
1BN-112-4

City of Richmond
(County of) Contra Costa

bears South 65°54'45" East, through a central angle of 78°27'21", an arc distance of 78.05 feet to a point of reverse curvature; thence northeasterly along the arc of a 43.00 foot radius, tangent curve to the left, through a central angle of 62°36'51", an arc distance of 46.99 feet to a point of cusp on the westerly line of Factory Street (60 feet wide), said point being hereinafter referred to as Point "D"; thence along said westerly line the following two courses: 1) South 39°55'45" West, 163.93 feet; and 2) southerly along the arc of a 269.98 foot radius, tangent curve to the left, through a central angle of 33°27'00", an arc distance of 157.62 feet to the aforementioned southerly line of said Parcel Two (10578 OR 162) and to the point of beginning.

CONTAINING 185,881 square feet more or less.

This conveyance is made for the purpose of a parkway and the grantor hereby releases and relinquishes to the grantee any and all abutter's rights of access, appurtenant to grantor's remaining property, in and to said parkway over and across the following courses:

Those certain courses described in the hereinabove described PARCEL 1 as 1) "North 57°48'16" West, 91.27 feet", 2) "North 52°03'17" West, 357.09 feet", 3) "along the arc of a 6135.00 foot radius...curve...an arc distance of 164.96 feet", 4) "along the arc of a 5863.00 foot radius... curve...an arc distance of 77.97 feet", 5) "South 44°21'37" East, 393.37 feet", 6) "South 42°42'36" East, 176.60 feet".

and over and across the following described courses:

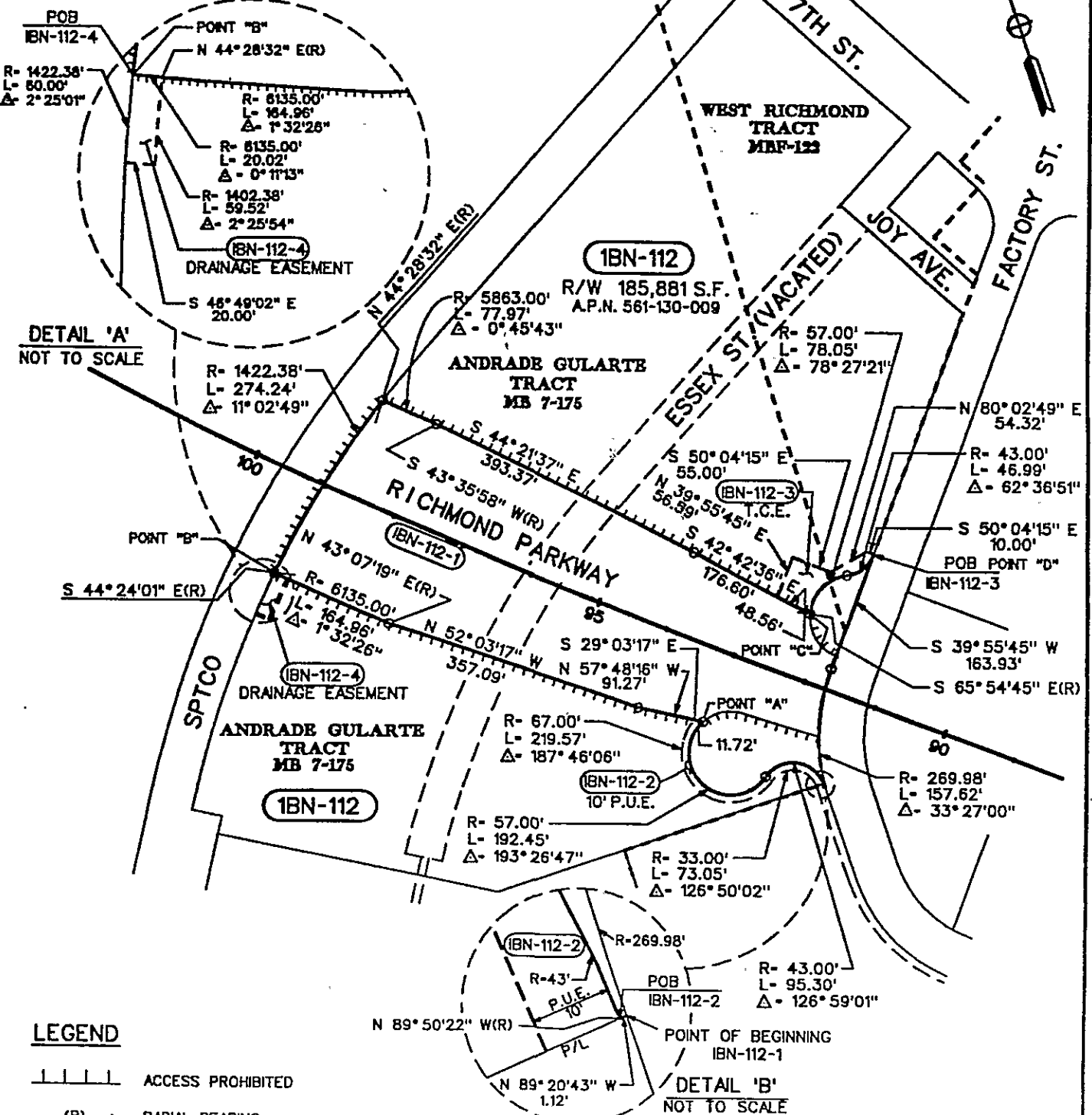
Beginning at the aforementioned Point "A" of the above described PARCEL 1; thence northeasterly along the arc of a 57.00 foot radius curve to the right, the center of which curve bears South 23°22'36" East, through a central angle of 60°17'36", an arc distance of 59.98 feet; thence South 53°05'00" East, 105.71 feet to the aforementioned westerly line of Factory Street (60 feet wide).

and over and across the following described course:

Beginning at the aforementioned Point "C" of the above described PARCEL 1; thence southeasterly along the arc of a 57.00 foot radius curve to the left, the center of which curve bears South 65°54'45" East, through a central angle of 71°08'36", an arc distance of 70.78 feet to the aforementioned westerly line of Factory Street (60 feet wide).

95 066485

BEARINGS AND DISTANCES SHOWN ARE ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, ZONE 3. MULTIPLY DISTANCES SHOWN BY 1.0000606 TO OBTAIN GROUND LEVEL DISTANCES.



END OF DOCUMENT

END OF DOCUMENT